



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-61-220 (Assignments--Sellers)**
- **WAC 458-61-235 (Boundary line adjustments)**
- **WAC 458-61-250 (Cemetery lots or graves)**
- **WAC 458-61-255 (Clearing title)**
- **WAC 458-61-300 (Contractor)**
- **WAC 458-61-330 (Foreclosure—Deeds in lieu of foreclosure)**
- **WAC 458-61-340 (Community property—Dissolution of marriage/divorce)**
- **WAC 458-61-374 (Exemption—transfers made "subject to")**
- **WAC 458-61-375 (Exemption—Mere change in identity of form—Family corporations and partnerships)**
- **WAC 458-61-376 (Exemption—Transfers where gain is not recognized under the Internal Revenue Code)**

Date last reviewed: **September 1999**

Reviewer: **Ed Ratcliffe**

Date current review completed: **June 19, 2002**

Briefly explain the subject matter of the document(s):

These rules primarily identify transfers of real property that are not subject to the REET, and distinguish these transfers from similar but taxable transfers. They clarify the conditions that must be satisfied, and the documentation needed to substantiate transfers that are not subject to the REET.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.



2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

There are no statutory changes affecting these rules subsequent to the date these rules were last revised. However, as noted in the previous review:

- WAC 458-61-375 should be revised to recognize the application of the restriction upon exemption placed upon nonrecognition transfers for entity formation, liquidation or dissolution, and reorganization by chapter 209, Laws of 1999. DOR needs to explain that a taxpayer cannot avoid the application of this change in law by claiming this exemption for former transfers that were subject to both exemptions.
- WAC 458-61-376 should be revised to include the restriction placed upon this exemption by chapter 209, Laws of 1999.

BTA 46892-18, Mitsui & Co. v. DOR (1997) found that corporate transfer for consideration between related corporations qualified for exemption under WAC 458-20-375 (as revised). While the previous review of this rule did not recommend incorporating this information, this reviewer suggests that the rule should address transfers between related corporations in regards to the statutory exemption for transfers that do not change the beneficial ownership of the property.



Consideration should be given to incorporating information from/addressing issues identified in the following WTDs:

- **19 WTD 574 (2000)**(No refund of REET is due upon initial transfer to purchaser because the purchaser later defaults forcing a second transfer in lieu of forfeiture. The second transfer is not subject to REET.) This issue has come up several times over the years. The Department should consider clarifying that the original transfer to a purchaser is still subject to REET even after the purchaser's default and the subsequent foreclosure.
- **19 WTD 1037 (2000)**(Transfer of controlling interest results in tax upon full value of consideration received regardless of application of IRC section 721 nonrecognition provision to part of the transfer.) This determination should be considered when revising WAC 458-61-376. Taxpayers need better directions upon the application of these nonrecognition transactions and the tax due when the exemption is not met.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

While the information now provided in these rules is generally written in a clear, concise, and effective manner, the following changes should be made to provide additional clarity or information.

- **WAC 458-20-220 (Assignments-Sellers)** This rule makes sense in relation to the real estate contract representing a security interest to the seller. We could more effectively provide this information by moving the information into the rule that discusses the exemption from REET for transfers of security interests (WAC 458-61-400. WAC 458-20-220 could then be repealed.
- **WAC 458-61-255 (Clearing title)** provides that a narrative explaining the nature of the clearance of title must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. This should be revised to list only the grantor and grantee.
 - Subsection (3) provides situations under which REET will not apply. Subsection (3)© discusses the situation when parents, who have been on title as co-signors for their child's loan, issue a quitclaim deed to exit title. The terms "parents" and "child's" should be changed to "relatives" and "other family members," respectively. This will reduce the current confusion that REET applies only when parents are co-signers.
 - The current example in subsection (3)(a) should either be revised or removed because it is more confusing than helpful.
- **WAC 458-61-300 (Contractors)** should be revised to address the documentation requirements for exempt transfers by contractors acting as nominees for the acquisition of land under a construction contract. This rule could also use some revising to present the information in a more user-friendly manner. Consider revising documentation requirement to have this written agreement meet the legal statute of fraud requirements for deeds.



- **WAC 458-61-330 (Foreclosure—Deeds in lieu of foreclosure)** is in need of a number of revisions.
 - The documentation requirements provided in subsection (4) of the rule should be moved to subsection (2). These requirements do not apply to the types of transfers addressed in subsections (1) and (3).
 - Subsection (2)(c) should explain that only one signature is needed on a declaration of forfeiture to substantiate the exempt nature of the transfer.
 - The rule should explain that a deed in lieu of foreclosure is taxable if there are multiple (recourse) debts and the lienholder/transferee assumes or merely makes payments on other debts.
- **WAC 458-61-340 (Community property—Dissolution of marriage/divorce)** distinguishes between transfers that are and are not subject to the REET upon divorce or dissolution of a marriage. The rule should present the basis for the general exemption provided. The rule does not, however, identify the type of documentation that will be accepted to substantiate the exempt nature of a transfer. The rule should be revised to explain that a copy of the property settlement agreement attached to a REET affidavit is acceptable documentation.
- **WAC 458-61-374 (Exemption – Transfers made “subject to”)** provides that nonrecourse debt on property does not establish consideration for a transfer.
 - The Department should review the basis for this provision and determine whether it remains valid.
 - Subsection (2) explains that a copy of the debt instrument verifying the debt’s character and the absence of any personal liability of the grantor is to be provided as an attachment to the department’s copy of the real estate affidavit. This should be revised to explain that what is needed is a copy of the recorded debt instrument.
 - The rule should provide taxpayers some direction for how REET applies when the property is subject to both recourse and nonrecourse debt.
- **WAC 458-61-375 (Exemption—Mere change in identity of form—Family corporations and partnerships)** should address whether consideration paid between related entities meets the exemption as provided in the BTA Mitsui decision. Limited liability companies should be added to the list of entities identified in subsection (1).
- **WAC 458-61-376 (Exemption-Transfers where gain is not recognized under the Internal Revenue Code).** Based upon subsequent legislation (ch. 209, Laws 1999), the initial rule may have read this exemption too broadly in applying it too all nonrecognition transfers under the cited IRC sections, even when the transfer was unrelated to the formation, liquidation, dissolution, or reorganization of an entity by the owners. The revision should reconsider the examples provided and whether these examples reflect the intended consequence of the current exemption.



4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **Chapter 82.45 RCW (Excise tax on real estate sales)—particularly RCW 82.45.010 ("Sale defined")**
- **Chapter 82.46 RCW (Counties and cities—Excise tax on real estate sales)**

To the extent that the following apply to certain transfers between contractors and property owners for whom the contractor performs construction services (WAC 458-61-300):

- **Chapter 82.04 RCW (Business and Occupation tax)**
- **Chapter 82.08 RCW (Retail sales tax)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

- **BTA 46892-18, Mitsui & Co. v. DOR (1997) found that corporate transfer for consideration between related corporations qualified for exemption under WAC 458-20-375 (as revised).**

Appeals Division Decisions (WTDs):

- **19 WTD 574 (2000)(No refund of REET is due upon initial transfer to purchaser because the purchaser later defaults forcing a second transfer in lieu of forfeiture. The second transfer is not subject to REET.)**
- **19 WTD 1037 (2000)(Transfer of controlling interest results in tax upon full value of consideration received regardless of application of IRC section 721 nonrecognition provision to part of the transfer.)**
- **21 WTD 145 (2002) (Transfer of property subject to both nonrecourse and recourse debt with agreement for transferor to pay recourse debt resulted in a transfer for consideration.)**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



5. Review Recommendation:

- | | |
|--------------|---|
| <u> x </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> x </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

This review only covers the period from the previous rule review period to date and includes all recommendations made in the prior rule review.

The following rules should be revised as needed to provide clarity or to address additional issues, as explained above:

- WAC 458-61-220 (may repeal, if consolidated with WAC 458-61-400)
- WAC 458-61-255
- WAC 458-61-300
- WAC 458-61-330
- WAC 458-61-340
- WAC 458-61-374 (may repeal, if consolidated with WAC 458-61-225)
- WAC 458-61-375
- WAC 458-61-376

These rules may be retained as is:

- WAC 458-61-235
- WAC 458-61-250

When making revisions to any rules contained in chapter 458-61 WAC, the drafter should where appropriate consolidate the information provided in this chapter into fewer but more comprehensive rules.



6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4